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June 25, 2004

Sidney Balthasar Unrau
Courtyard at Jamestown
3610 North University Avenue #375
Provo, Utah 846034

VIA FACSIMILE
(801) 705-8480

Re: Reclamation or Cherry Hill Park Mine.

Dear Mr. Unrau:

Last Friday Mr. Dan Powell brought me a modified version of a contract which he represented to have been prepared by you. Prior to this, the Division of Oil, Gas, and Mining had met with Mr. Dan Powell and Mr. Stephen Powell in an effort to reach an agreement for the removal of material from the Cherry Hill mine to be sold with a portion of the proceeds to be used for reclamation. These negotiations were along the lines of the similar agreement drafted with you on behalf of Mr. Dan Powell and Mr. Wayne Neilson last winter. As you are aware, that agreement was never completed.

Mr. Dan Powell and Stephan Powell came in this April in an urgent rush, as usual, and without an appointment saying they needed to remove material from the site in the next few days and have it tested to see if it would be suitable for sale to the Sunnyside Cogeneration facility. Before meeting with them, I asked if they were still represented by counsel since I had not received responses to prior letters to you on their behalf. They said they would have you review the contract and we tried to reach you several times. We reached your office, but they were not able to get you on the phone. The Powells insisted on going ahead with the meeting and we revised the contract to make it easier for them to remove 500 tons for testing. They took the proposed agreement and said they would visit with you and return the next day with any changes. I tried to make it very clear that DOGM would not go forward with the sale of any material from the site until we had a complete understanding of the terms of the agreement including what was required by way of escrow and reclamation. When they returned they had some questions. We reviewed the provisions in detail and they said they were basically "ok" with the agreement and had brought a check for \$500 to remove a test amount. A letter explaining the agreement for future sales of material from the mine site which needed their signatures and payment was faxed and mailed to you with an explanatory letter on April 22, 2004.

June 25, 2004

Dan showed up again on a few occasions after the \$500 was put up. Dan said he was asking for clarifications about the reclamation plan, an Exhibit to the Agreement, that Stephen had raised (Stephen was supposedly too busy to meet with us), and questions about the time between delivery and making of escrow payments. We had Lynn Kunzler explain the amount of topsoil and mulch to be required under the reclamation plan. He represented that these were questions Stephen Powell was having, and that he would explain it to him and get it signed.

Nothing happened for a few weeks until indirectly we learned that the material was acceptable. At another drop in meeting that week, Dan was advised by Alison Garner of this office not to remove any material until the agreement was signed. The following Monday I was called by Dan who said Stephen was now removing material and selling it to someone in addition to Sunnyside and that he was opposing Steve's removal of material, in part because it was contrary to their separate agreement and that he had locked the gate. As a result of the removal of material without a signed agreement, DOGM issued a "cessation order" that was served on both Dan and Steve and other doing work at the site, and posted at the mine. I believe copies were sent to your office too.

In response, Stephen Powell came in and met with us saying he had relied on Dan Powell's advice and thought he was taking care of things and that he was wrong not to have sent in the initial payment required by the agreement and to have begun mining before the agreement was signed. He said he would make recompense and not proceed without Division approval and had no problems with the agreement. The Division decided that without waiving its rights to seek penalties from Stephen for the removal of material without a permit and contrary to the agreement with the Division, that it would be practicable and best to proceed with the sale of material from the site to generate funds to be used for reclamation. Additional modifications were made to the agreement to reflect the changed circumstances and to require a larger upfront payment and a shorter turn around between delivery and payments to escrow. Stephen took the revised agreement and came back with a few changes and the payment of \$7500.00. The agreement was signed, by Stephen on June 2, 2004. Copies were provided to Dan to be signed.

About a week after that signature by Stephen, I was contacted by Dan who said he had been too busy to come in to sign the agreement, and that he wanted to review it with you, but you were out of town. I expressed my dismay at his failure to sign it and his late desire to have it reviewed. I told him as far as I was concerned there was an agreement in place. Dan said he couldn't get hold of you because you were on vacation. Finally, last Friday he brought me the revised agreement that he says you have drafted and that it is what he will sign.

I hope you can understand that given the long time we have been working with Dan, and others which is always in some emergency basis and at his insistence, and as often as we have tried to communicate with your office with no response, and as many accommodations as have been made, all to help resolve *his* liability for *his* failure to obtain a permit and to reclaim the

June 25, 2004

mine site as ordered by the Board, I found his belated desire to make changes to the agreement frustrating.

Not that Dan Powell is the only point of frustration. Stephen Powell has now been mining for almost a month since we revised the agreement and he signed it. He is now out of compliance since he does not have the written consent from the Division as to what material can be removed, he has not reported the amount removed, he has not set up the escrow account with Zions Bank, and he has not made any additional payments for the material that has been taken despite evidence that substantial amount have been are being removed from the site weekly. I am not sure if you have ever represented Stephen Powell but I forward this information to you in case you do and to advise you that as to Dan's interests, if any under the arrangement, they are in peril of termination and forfeiture.

Finally, I come to the changes in the Agreement as proposed by Dan and contained in your latest draft. I do not want to make changes for Dan only to have a problem with Stephen. In addition, there are serious questions as to the parties' current compliance with the agreement as explained above. *I need to have Stephen or Dan immediately rectify these deficiencies before we discuss the Agreement at all.* I think it would be best to have meeting with both parties. You are invited to come to my office, or if you prefer to have either Stephen and Dan (or both) come to either my office or to your office and we can contact the other by telephone.

I will then gladly discuss the changes, but only in the context of the current state of affairs and the history recited above. The version provided to me did not have the changes marked or redlined so I am forced to compare copies and may not catch all of the differences. Could you respond by e-mail or by fax with a redlined version as well as the original? Thank you for your review and assistance with this matter. If you wish to discuss this matter further please call.

Sincerely,



Steven F. Alder
Assistant Attorney General

cc:
Alison Garner,
Mary Ann Wright
Steve Powell